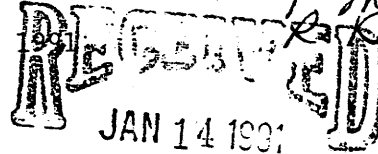




United States Department of the Interior

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January 10, 1991



DIVISION OF
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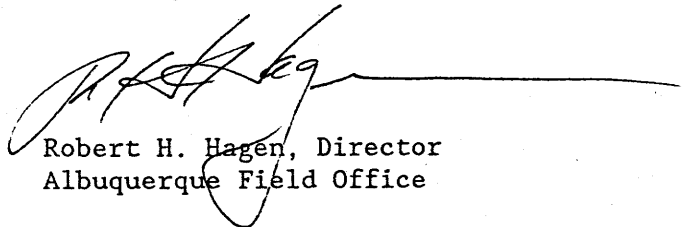
Dr. Dianne R. Nielson, Director
Department of Natural Resources
Division of Oil, Gas and Mining
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Salt Lake City, UT 84180-1203

Dear Dr. Nielson:

The final 1990 Annual Evaluation Report for Utah is enclosed.

If you have any questions, please call Brian Smith or me at
(505) 766-1486.

Sincerely,


Robert H. Hagen, Director
Albuquerque Field Office

Enclosure

OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

Annual Evaluation Report

for the

Regulatory and Abandoned Mine Land Reclamation Programs

Administered by the State

of

UTAH

for

Evaluation Year 1990

(July 1, 1989 through June 30, 1990)

January 1991

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I. Introduction

The Surface Mining Control and Reclamation Act of 1977 (SMCRA) created the Office of Surface Mining Reclamation and Enforcement (OSM) in the Department of the Interior to oversee the regulation of coal exploration and surface coal mining and reclamation operations and the reclamation of lands adversely affected by past mining practices. SMCRA provides that, if certain conditions are met, a State may assume primary authority for the regulation of surface coal mining and reclamation operations and the reclamation of abandoned mine lands within its borders. Once the State has obtained such approval, OSM has the responsibility to make the investigations, evaluations, and inspections necessary to determine whether the State programs are being administered and enforced in accordance with the approved program provisions.

Because it is neither possible nor necessary to fully evaluate each program element and subelement every year, OSM's Albuquerque Field Office has developed a schedule (Appendix B) specifying when each element and subelement will be reviewed during a 3-year evaluation cycle. This schedule will be revised as necessary to respond to changing conditions within Utah and concerns identified by the public or OSM oversight activities. Comments regarding the oversight process, recommendations for additional review topics, and suggestions for improvement of future reports are encouraged and should be submitted to the Director of the Albuquerque Field Office.

Set forth below are the summary findings of the Director of OSM's Albuquerque Field Office regarding the performance of Utah for the period July 1, 1989 through June 30, 1990. Detailed background information and comprehensive element-specific reports are available for review at the Albuquerque Field Office.

II. Overview of the Utah Coal Mining Industry

Coal is found beneath approximately 18 percent of the State of Utah, but only 4 percent is considered minable at this time. The demonstrated coal reserve base is about 6.4 billion tons, 1.3 percent of the national reserve base. Most of Utah's coal resources are held by the Federal Government and Indian Tribes.

Utah's coal fields are divided into the Northern, Central, Eastern, and Southwestern Utah coal regions. The most productive region has been, and is, the Central Utah Coal Region which includes the Book Cliffs, Wasatch Plateau, and Emery Coal Fields. There are vast, substantially undeveloped coal fields in the Southwestern Utah coal region. Development of these fields will probably be difficult because of environmental concerns resulting from the proximity of the coal fields to national parks and other recreation areas.

Most of Utah coal is bituminous and is of Cretaceous Age. The BTU value of Utah coal is high compared to other western States. Sulfur content ranges from medium to low in the more important coal fields.

Most current operations mine seams that exceed 8 feet in thickness. All coal production is from underground mining. There are 30 permitted operations in Utah, 26 of which are currently operating (Table 2). There are 119,876 acres of land currently under permit for mining with approximately 2,300 acres disturbed. Utah's coal production has been increasing steadily since the early 1970's, producing 20.8 million tons in 1989 (Table 1). Utah's coal industry employs approximately 2500 miners.

The climate of the Central Utah Coal Region is characterized by hot, dry summers and cold, relatively moist winters. Normal precipitation varies from 6 inches in the lower valleys to more than 40 inches on some high plateaus. The growing season ranges from 5 months in some valleys to only 2-1/2 months in mountainous regions of the State. These extreme climatic conditions can make land reclamation difficult.

III. Executive Summary

A. Overall Performance in Program Implementation

1. Regulatory Program

Since the previous evaluation, the Division of Oil, Gas and Mining's (DOGM) permitting program has shown improvement in the timeliness of processing midterm permit reviews and in processing some permit revisions. Problems remain, however, with the amount of time being taken to accomplish permit revisions necessary to bring an operation into compliance in response to oversight inspections. Problems were noted where DOGM used permitting actions that were not in accordance with its approved program. These permitting actions include: Approving temporary permits, approving small area exemptions or drainage control by the "best technology currently available" without requiring the operator to demonstrate that effluent limitations can be met, and giving operators oral approval to change operations or reclamation plans. DOGM also did not require permittees to permit haul and access roads that are designated as public roads and may involve some degree of public use in addition to the use by the mining operations. This issue requires DOGM to re-evaluate how program jurisdiction requirements apply to these types of roads in order to be consistent with direction provided by a Federal court decision. DOGM and OSM are currently re-evaluating the procedure used to determine exemptions from regulation.

DOGM continues to conduct substantially all inspections mandated by its program.

The past three annual evaluation reports noted that DOGM did not identify and cite all violations that existed during complete inspections. This issue continued into the 1990 evaluation period, and little progress has been made toward resolution. DOGM personnel also administratively vacated two enforcement actions for reasons that OSM believes conflict with program requirements.

DOGM properly performs proposed civil penalty assessments, basing the assessment on the appropriate criteria and in a consistent manner. However, DOGM does not always adhere to timeframes specified in its program for assessing proposed penalties; 30 out of 47 assessments were made beyond the 30-day time limit.

DOGM reviews enforcement actions relating to the validity of the fact of violation during assessment conferences. The fact of violation should be considered during assessment conferences only as it relates to the appropriateness of the civil penalty. Based on informal assessment conference reviews, the Assessment Conference Officer vacated four enforcement actions. OSM believes that it is inappropriate to vacate enforcement actions during assessment conferences; the formal hearing process should be utilized for such actions. OSM also believes that the reasons for vacating those enforcement actions conflicted with program requirements.

DOGM is diligent in requiring that employees file statements of employment and financial interests and otherwise conform to conflict of interest provisions. However, employees of the Utah Industrial Commission who administer the Blaster Certification Program were not initially required to file statements but did file statements during the first quarter of the 1991 evaluation period.

The Executive Summary for the 1989 Annual Evaluation Report for Utah stated: "In summary, while DOGM has the ability and expertise to administer Utah's regulatory program properly, there are some major problems that severely impact the overall effectiveness of Utah's program." The 1990 evaluation indicates DOGM made little progress during the evaluation period toward correcting the regulatory problems that impact program effectiveness.

Because of the continuing nature of many of the issues in Utah and OSM's previous inability to bring about change, OSM has increased emphasis on the resolution of issues with

DOGM's administration of the State program. A Memorandum of Understanding (MOU) is being developed to obtain DOGM's commitment to corrective actions in regard to citing all violations. A formal "Progress Report" is being established to monitor remedial activities in other program areas. DOGM has been cooperative in this effort. Since the end of the evaluation period and with the initiation of the MOU and Progress Report, progress is being made toward correcting problems. The current status of specific problems can be found in the Summary Findings section of this Report under Status of Problems.

2. Abandoned Mine Lands Program

Since commencement of Utah's Abandoned Mine Reclamation (AMR) Program on June 3, 1983, OSM has awarded DOGM \$8,770,000 for the reclamation of 22 coal projects, 19 of which are completed. That funding also provided for reclamation of six noncoal projects, five of which are completed. OSM also awarded Utah a total of \$3,630,000 to administer its AMR Program and \$333,254 in set-aside money to fund reclamation after 1992.

DOGM worked on activities ranging from coal and noncoal project reclamation to developing educational materials. Accomplishments of the AMR Program during this period include completing reclamation of six coal projects. DOGM continued reclamation on two additional coal projects and one noncoal project. DOGM performed planning and engineering tasks to enable it to tentatively complete all its remaining coal reclamation by the end of 1992. Other accomplishments include providing technical assistance to the National Park Service for reclamation projects on Park Service lands and publishing an educational workbook on abandoned mine hazards for general distribution to 4th-grade classes. One particularly notable accomplishment involves DOGM's volunteer AMR Program. For the past 2 years, DOGM's AMR volunteers have been successful in working with other State and local agencies and landowners to increase awareness and to abate abandoned mine land (AML) hazards other than those for which reclamation was funded through OSM. The combined efforts of the AMR Program and its volunteers have been instrumental in keeping the number of reported AML-related accidents relatively low in Utah. Accomplishments shown on Table 15 include 19 mine portals and 16 vertical shafts closed largely through the efforts of DOGM's volunteers.

Administrative problems were noted with the AMR Program throughout the evaluation period. Most of the problems concerned administrative requirements related to grant

applications, approvals, and reporting. The most significant occurred when DOGM did not obtain written OSM approvals for project scope changes before incurring costs. OSM and DOGM addressed every problem and are working to prevent their recurrence. All other aspects of the AMR Program in Utah are properly being implemented in accordance with Section 102(h) of SMCRA.

B. Status of Unresolved Issues From Previous Evaluations

1. Regulatory Program

Several issues were identified in the 1989 Annual Evaluation Report as being unresolved or tentatively resolved. The status of those issues is as follows:

DOGM's timeliness in conducting midterm reviews has improved, and this issue is considered resolved. Permitting actions, in general, are also more timely; however, permit revisions resulting from Ten-Day Notices (TDN) have not always been accomplished in a timely manner.

DOGM's use of permitting actions that do not conform to the approved State program, such as issuing temporary permits and approval of sediment control practices for small areas, continues to be an issue. Also, DOGM's performance in processing permit transfers still needs improvement.

Bonding concerns on a Federal lands permit were identified during the last evaluation period where: (1) DOGM accepted an inappropriate collateral bond; and (2) OSM was not listed as a copayee on the bond. Those concerns were resolved, but a similar situation developed on another Federal lands permit during this evaluation period where DOGM and OSM have been extensively involved in negotiations regarding a settlement agreement to replace bonding coverage.

DOGM's performance in identifying and citing violations remains an issue. The improper vacation of enforcement actions, both administratively by DOGM and in informal assessment conferences by the Assessment Conference Officer, also continued to be an issue. During the first quarter of the 1991 evaluation period, DOGM submitted a proposed revision to the assessment conference process to address the identified concerns.

OSM has not observed problems with pattern of violations reviews during this evaluation period; therefore, this issue from the previous evaluation period is considered resolved.

During the 1989 evaluation period, OSM expressed concerns about an MOU between DOGM and the Department of Health concerning citing water quality violations. DOGM is now working with the Department of Health to amend this MOU.

2. Abandoned Mine Lands Program

There were no unresolved issues from the 1989 Annual Evaluation Report.

C. Success of the State Program in Achieving Overall Reclamation Success

1. Regulatory Program

To evaluate the overall success of Utah's regulatory program in achieving reclamation of mined lands, OSM began collecting data during routine statistical oversight inspections with which it intends to build a data base to measure on-the-ground reclamation success (quantity, quality, and timeliness of reclamation). Because procedures for collecting data were not in place until midway through the evaluation period, OSM was unable to collect sufficient data during the 1990 evaluation period to draw conclusions regarding the overall success of Utah's regulatory program in achieving reclamation. Also, all of the mining operations in Utah are underground mines, many of which have been active since inception of the State program and are expected to remain active for many more years. Because of this, compiling statistics and comparing the number of acres disturbed, regraded, and revegetated would not be meaningful or provide an accurate picture of the progress of reclamation in Utah.

During this evaluation period, OSM made general observations that reflect the overall success of Utah's program. These observations were made during statistical oversight inspections, during a bond release inspection, through document review, and through discussions with the State Regulatory Authority. OSM observation in three areas indicated that improvement is needed in the administration of the State program to ensure successful reclamation. These areas are highwall elimination, protection of surface waters, and timeliness of reclamation.

During a phase I bond release inspection, OSM found that DOGM had allowed the operator to leave highwalls exposed. Utah's approved program allows for the retention of highwalls if certain conditions exist; however, OSM believed the conditions were not applicable to the situation in question. The Utah Board of Oil, Gas and Mining

subsequently approved retention of highwalls at this site. OSM is reviewing this action. OSM also has concerns regarding compliance with backfilling and grading requirements at another mine where retention of highwalls was authorized.

OSM is concerned about the protection of surface waters. One site in Utah has been responsible for oil emulsion discharges and other discharges of coal-fine-laden water into a trout stream. The initial discharge occurred in April 1989 and resulted in a fish kill affecting 3.3 miles of stream and reduced the macroinvertebrate population in a section of the stream by approximately 90 percent. At least two additional discharges occurred in May 1989, further damaging the stream. In response to these discharges, DOGM issued a Notice of Violation (NOV), a failure-to-abate Cessation Order, and an imminent-harm Cessation Order. Both Cessation Orders were later vacated during an informal assessment conference. DOGM worked closely with the Utah Division of Environmental Health (Health) to coordinate abatement requirements which included repairs to in-mine piping, adding a back-up sediment pond, and establishing a stream restoration program. DOGM also worked with Health and the Division of Wildlife Resources to initiate research on the potential toxicity of water-soluble emulsions and flocculents. However, water quality problems continued at the site with two additional enforcement actions relating to oil and grease discharges being issued in November and December 1989. Abatement measures for the enforcement action issued in December were not completed until June 1990 pending review and approval of a stream enhancement plan by DOGM, which DOGM held in abeyance until after the spring runoff.

During document review associated with a 1990 oversight inspection, OSM found that a similar situation occurred at another site in 1988 when a DOGM inspector discovered a bank-to-bank layer of detergent foam in a trout stream that was originating at a mine site. As a result of violations discovered at the mine, the inspector issued two NOV's and an imminent-harm Cessation Order. DOGM later vacated the two NOV's and terminated the Cessation Order prematurely, although its actions resulted in the operator discontinuing the use of certain types of emulsions because of toxicity concerns.

The third area of concern regarding overall reclamation success is the timeliness of reclamation. One mine on Federal lands in Utah has been inactive and without a permit since 1983. During this evaluation period, OSM required that abatement work be performed to bring the site into

compliance and that the operator obtain a permit or reclaim the site. At this time, OSM and DOGM are working to accomplish as much reclamation as possible this year and to expeditiously complete permitting to accommodate planned use of some of the facilities for a future mining operation.

2. Abandoned Mine Lands Program

DOGM's reclamation of six projects and work on two others in this period eliminated safety hazards associated with 73 portals, 15 vertical shafts, 1 highwall, 1 deteriorated structure, and more than 483,000 cubic yards of material in steep-sided and often burning coal waste piles on 26 acres of disturbed land. Approximately 30 reclaimed acres were returned to a condition that is more beneficial and safer for use by the people of Utah than if left unreclaimed. In addition, reclamation reduced the adverse effects of past mining on wildlife and other natural resources (See Table 15).

IV. Actions Affecting Program Implementation

A. Regulatory Program

There were no significant legal, legislative, or budgetary actions impacting implementation of Utah's program during this evaluation period.

B. Abandoned Mine Lands Program

Nothing occurred during the evaluation period that would affect implementation of Utah's AMR Program.

V. Summary Findings

Summary findings for the specific program elements reviewed during the evaluation period begin on the following page.

UTAH

Regulatory Program Element: Permitting Actions

Subelements Reviewed: (1) Processing of New Mining Permit Applications; (2) Processing of Exploration Applications; (3) Processing of Applications for Permit Revisions, Transfers, Sales, and Assignments; and (4) Conduct of Midterm and Other Reviews Required by 30 CFR 774.11

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Summary Findings: No new permit applications were received during this evaluation period. However, an application which proposes significant alteration to the original permit must be processed as a new permit. DOGM processed one such application, taking all appropriate actions. (See Table 4.)

OSM reviewed DOGM's coordination and consideration of comments from governmental agencies and the State Historic Preservation Officer and determined that, generally, DOGM was adequately coordinating with the appropriate agencies.

DOGM did not receive any applications for exploration over 250 tons; therefore, no review occurred in this area.

DOGM processed three permit transfers during the 1990 evaluation period. OSM believed that two of these transfers, both involving Federal lands, were not handled appropriately because issues such as right-of-entry, ownership and control, and bond validity were not verified prior to permit transfer, and public notice requirements were not met prior to permit transfer.

OSM reviewed the overall processing of revisions and found DOGM's actions to be appropriate with the exception of timeliness of permit revisions resulting from Ten-Day Notices. The untimeliness of processing these revisions was an issue noted in the 1989 Annual Evaluation Report; while improvement has been made, some problems continued into this evaluation period.

The 1989 Annual Evaluation Report indicated that DOGM was taking as long as a year to do midterm reviews. This has improved; midterm reviews done in the 1990 evaluation period ranged from being on time to being 4 months late. OSM found that DOGM did thorough midterm reviews; administration of midterm reviews was found to be appropriate with the exception of problems with information transmittal to OSM.

As was noted during last year's evaluation, DOGM uses permitting actions that are not in accordance with its approved program. During the 1990 evaluation year, DOGM granted a temporary permit to a company that OSM believed did not meet deadlines in submitting a complete and accurate

permit renewal application and gave oral approval to operators to change their operations or reclamation plans.

The State program allows DOGM to determine on a case-by-case basis what constitutes the "best technology currently available" (BTCA) for areas that do not pass through a sedimentation pond and do not qualify for a small area exemption (SAE). The program allows approval of SAE's when the operator demonstrates that sedimentation ponds and alternative sediment control measures are not necessary for effluent to meet water quality standards. For the majority of approvals during the 1990 evaluation period, DOGM did not document the basis for its determinations that alternative sediment control measures were BTCA. SAE's were also approved without the appropriate demonstrations that water quality would be adequate.

As noted earlier, DOGM does not require permitting of access and haul roads that it considers public roads exempt from regulation. In 1985, following a Federal Court decision, OSM disapproved a part of the Utah program that specified criteria for exemption of public roads from the affected area. The disapproval had the effect of requiring that all access and haul roads be regulated because the State program states that "The affected area includes * * * all areas covered by new or existing roads used to gain access to or for hauling coal to or from coal mining and reclamation operations. Discussions between OSM and DOGM toward resolution of this issue have continued for several years; however, negotiations have become more intense during the past evaluation period.

DOGM's use and maintenance of the Applicant Violator System met all program requirements during the evaluation period.

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Status of Problems (if any): OSM will continue to work with DOGM to improve: (1) The timeliness of processing revisions resulting from TDN's; (2) the transmittal of information to OSM offices; and (3) the appropriateness of permitting actions. The issue concerning timeliness of midterm reviews appears resolved.

The issues of sediment controls for small areas and permitting of haul roads continue into the 1991 evaluation year. DOGM and OSM are currently re-evaluating the road exemption procedures.

UTAH

Regulatory Program Element: Performance Bonds

Subelements Reviewed: (1) Tracking; (2) Computation and Adequacy; (3) Verification of Bond Validity/Value/Lack of Restrictions; and (4) Processing of Bond Release Applications - Evaluation of Reclamation Success

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Summary Findings: DOGM's system of tracking bonds is professional and well maintained. System security is also well kept. OSM found minor problems with the execution of some bonds reviewed and on the bond forms DOGM was using. DOGM responded to OSM concerns and made changes to its bond form.

OSM concerns with existing bonds were minor, except for two situations. One company had as bond a Certificate of Deposit (CD) that was found to be made payable solely to the permittee and in possession of the issuing bank. Another company that is self-bonded was found to be financially vulnerable. The company's capital stock is owned by a parent company that is in Chapter 11 bankruptcy due to the complexity of the companies' financial co-commitments; there is no way to predict what effects Chapter 11 resolution will have on the mining company's solvency.

No program deficiencies were found in the review of bond calculations and amounts.

There were no bond releases during the evaluation period.

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Status of Problems (if any): The issue concerning the CD used for bond but not posted in DOGM's name has been resolved. Because the operator refused to reissue the CD to DOGM, DOGM proposed an "assignment of deposit" for the CD. The assignment form, approved by OSM and executed by the permittee, resulted in compliance.

DOGM has informed OSM of the limitations of self bonding. DOGM has not requested that the self-bonded company substitute a different form of bond in this specific case.

The 1989 Annual Evaluation Report indicated that a bonding concern relating to a permit transfer was pending resolution through a Memorandum of Understanding between OSM and DOGM. This resolution occurred.

UTAH

Regulatory Program Element: Inspections

Subelements Reviewed: (1) Inspection Frequency; and (2) Maintenance of Inspectable Units List and Inspection Database

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Summary Findings: DOGM conducted 245 partial and 136 complete inspections on 30 inspectable units. DOGM met the required inspection frequency for all sites except one where it missed a complete inspection (Table 3).

DOGM's program requires inspections as necessary on coal exploration sites to ensure compliance with the State program. During the evaluation period, DOGM conducted eight complete inspections on eight coal exploration sites.

DOGM adequately maintains an inspectable units list and an inspection database.

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Status of Problems (if any): OSM did not identify any problems during review of this program element.

UTAH

Regulatory Program Element: Enforcement

Subelements Reviewed: (1) Identification and Citation of Violations; (2) Notices of Violation and Cessation Orders - Documentation of Reasons for Modifications, Terminations, and Vacations; and (3) Responses to Ten-Day Notices

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Summary Findings: OSM believes that DOGM does not cite all violations that are present during complete inspections. OSM first identified this as an issue in mid-1986. An analysis of data collected during the 1987, 1988, 1989, and 1990 evaluation periods indicates limited improvement. During the 1987 evaluation period, DOGM cited 1 of 14 violations observed by OSM during oversight inspections (7 percent); in 1988, 9 of 98 (8 percent); in 1989, 4 of 31 (13 percent); and in 1990, 7 of 44 (16 percent).

Of the 44 violations observed by OSM during 1990 oversight inspections, 10 were believed to have occurred after the last State complete inspection (LSCI). DOGM cited 7 of these 10. The remaining 34 violations were believed by OSM to have existed during the LSCI, of which DOGM did not cite any during the LSCI (Table 18).

The reasons DOGM gave for not citing the 34 violations believed by OSM to have existed during the LSCI were: (1) It was not a violation (44 percent); (2) the violation was not recognized (15 percent); (3) the practice was allowed under the approved permit (9 percent); (4) the violation was too minor to cite (9 percent); (5) it was working with the operator to correct the violation (21 percent); and (6) other (2 percent).

OSM issued 12 Ten-Day Notices (TDN) to DOGM alleging the existence of 28 uncited violations. DOGM responded appropriately to 21 of the violations contained in the TDN's and inappropriately to 7. Several of DOGM's responses to TDN's were incomplete and required followup by OSM before findings could be made. OSM conducted follow-up inspections to check for abatement of the unresolved TDN's and, as a result, issued one Federal Notice of Violation (NOV) citing two violations.

DOGM alleged that 14 of the violations cited by OSM through TDN's were permit defects that could be corrected through permit revision. OSM agreed with DOGM in 10 of these cases but held that issuance of enforcement actions or correction of the violation within the 10-day period allowed by regulation were the only appropriate actions in the other 4 cases.

An additional issue identified during previous evaluation periods was that DOGM either improperly vacated enforcement actions or did not adequately document the reasons for the vacations. A review of DOGM vacation activity that occurred during this evaluation period found that this continues to be an issue. OSM believed that six of the eight vacations that occurred during this evaluation period were not in accordance with program requirements. Four of the enforcement actions were vacated by the Assessment Conference Officer. This is discussed in more detail on page UT-17 under "Administrative and Judicial Review."

The 1989 Annual Evaluation Report for Utah stated that DOGM's pattern of violations reviews and actions to implement alternative enforcement were untimely. There have been no occasions during the 1990 evaluation period for DOGM to utilize these procedures.

The 1989 Annual Evaluation Report stated that DOGM had entered into a Memorandum of Understanding (MOU) with the Utah Department of Health (Health) that establishes procedures for addressing water-quality violations. OSM expressed concern at that time about the implementation of the MOU because: (1) It resulted in delays in enforcement action; (2) requirements for enforcement action are different under the approved State program than the requirements under which Health operates; and (3) any delegation of authority by DOGM to Health must be approved by OSM through the program amendment process.

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Status of Problems (if any): OSM and DOGM developed an MOU for resolution of inspection and enforcement issues during the first quarter of the 1991 evaluation period.

OSM and DOGM continually discuss DOGM's vacations of enforcement actions. DOGM responded to OSM's analysis of the assessment conference process during the first quarter of the 1991 evaluation period with proposed revisions to the process. Discussions concerning the details of the proposed revisions are continuing. OSM and DOGM also continue to discuss incomplete responses to TDN's.

During the first quarter of the 1991 evaluation period, DOGM drafted a revised MOU with Health relating to enforcement of effluent violations. This MOU, when implemented and in conjunction with a policy statement being proposed in the aforementioned MOU between OSM and DOGM, should resolve this concern.

UTAH

Regulatory Program Element: Civil Penalties

Subelements Reviewed: (1) Procedures; (2) Documentation of Assessments, Waivers, and Adjustments; and (3) Maintenance of Enforcement Value

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Summary Findings: DOGM's proposed civil penalty assessments were based on the appropriate criteria and were assessed in a consistent manner.

DOGM adequately documented its reasons and calculations for proposed penalties.

The State program requires that proposed penalties be assessed within 30 days from the date of issuance of an enforcement action. DOGM did not adhere to this timeframe. DOGM assessed 30 out of 47 (64 percent) of the proposed penalties late. Penalties were assessed an average of 40 days after issuance of the enforcement action with a range of 4 to 92 days. DOGM stated that it often delays the assessment until termination of the enforcement action so that it can consider good faith, because it believes that this streamlines the process.

DOGM adhered to program timeframes for holding informal assessment conferences. DOGM also met program requirements for documentation of the reasons and calculations for penalty assessments, adjustments, and waivers with the exception of one conference where the enforcement action was vacated and the reasons for the vacation were inadequately documented.

OSM identified the improper vacation of enforcement actions during informal assessment conferences as an issue in the 1988 and 1989 Annual Evaluation Reports. This continued to be an issue. During the first three quarters of the evaluation period, the informal Assessment Conference Officer (ACO) vacated four enforcement actions during informal assessment conferences. This issue is discussed further under "Administrative and Judicial Review" on page UT-17 of this Report.

DOGM conducts investigations through the Applicant Violator System and through other means to ensure prior to issuance of a permit that the applicant does not have unabated violations or overdue civil penalties. During the evaluation period, investigations conducted through AVS did not reveal a situation requiring permit blockage.

DOGM adequately pursues the collection of overdue civil penalties.

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Status of Problems (if any): Concerning timeframes for assessing proposed penalties, during the first quarter of the 1991 evaluation period, DOGM agreed to provide more information to OSM to explain why DOGM believes its actions were appropriate. OSM will continue discussions with DOGM to reach resolution.

OSM conducted an analysis of Utah's hearing and assessment conference processes and believes that vacating enforcement actions during assessment conferences is procedurally incorrect. OSM believes that the fact of violation should only be considered in these proceedings as it relates to the appropriateness of the civil penalty, and that the fact of violation review as it relates to the validity of the enforcement action should occur through formal hearing procedures. These findings were transmitted to DOGM on April 20, 1990. DOGM responded to OSM in a letter dated September 21, 1990, indicating that DOGM plans to make regulatory and procedural changes to correct these concerns. Hearing and assessment conference processes will be a review topic for the 1991 evaluation period.

UTAH

Regulatory Program Element: Administrative and Judicial Review

Subelements Reviewed: (1) Review Procedures; (2) Appeal or Remediation of Adverse Decisions; and (3) Cost Recovery Procedures and Decisions

=====

Summary Findings: DOGM notifies permittees of their rights to apply for review of enforcement actions and civil penalty assessments and their rights of appeal. During this evaluation period, DOGM did not receive requests from permittees for informal hearings, nor were there any formal hearings requested or held before the Board of Oil, Gas and Mining. There were also no judicial cases filed. Because there were no formal hearings, OSM did not evaluate timeliness of scheduling and issuance of decisions, documentation of decisions, or consistency with program requirements.

Utah reviewed 19 Notices of Violation (NOV's) and 2 Cessation Orders (CO's) through the informal assessment conference process during this evaluation period. In addition to review of the appropriateness of the civil penalty, Utah allows the review of the fact of violation in these proceedings as it relates to the validity of the enforcement action instead of just how it affects the amount of the penalty. During the 1988 evaluation period, OSM identified an issue with enforcement actions being vacated during informal assessment conferences. This issue continued into the 1989 evaluation period and remains a concern at the end of this evaluation period. During this evaluation period, the informal Assessment Conference Officer (ACO) vacated two NOV's and two CO's during informal assessment conferences. OSM believed three of the four vacations were not based on sound program rationale.

As a result of OSM's concerns about the vacation of enforcement actions during informal assessment conferences, OSM conducted an analysis of Utah's hearing and assessment conference processes and compared its procedures with approved State program requirements and Federal procedures and requirements. OSM concluded that: (1) The informal assessment conferences should be placed under the purview of the DOGM Director so that the Director, rather than a Board-appointed ACO, has final authority for actions resulting from these proceedings. This is necessary to ensure that no circumstance will exist where the regulatory authority's authority to implement, administer, and enforce its program is impaired; and (2) during informal assessment conferences, the fact of violation should be considered only as it relates to the appropriateness of the civil penalty; the validity of the enforcement action should be reviewed only through the formal hearing process. By reviewing the fact of violation during informal assessment conferences, the requirements for formal hearings, particularly in regard to public notice and participation and establishing a formal record, are being circumvented.

There were no appeals of adverse administrative or judicial decisions during the evaluation period. The only adverse decisions resulted from informal assessment conferences when enforcement actions were vacated. DOGM chose not to appeal these decisions.

There were no petitions for recovery of costs during the evaluation period.

=====
Status of Problems (if any): By letter dated April 20, 1990, OSM transmitted to DOGM the conclusions, recommendations, and required actions resulting from OSM's analysis of Utah's hearing and assessment conference processes. DOGM replied by letter dated September 21, 1990. Discussions toward resolution will continue during the 1991 evaluation period.

UTAH

Regulatory Program Element: Designation of Lands Unsuitable for Surface Mining

Subelements Reviewed: None.

=====
Summary Findings: This element was not selected for review during this evaluation period because there has been no recent activity. This element is scheduled for a complete review during the 1992 evaluation period.

=====
Status of Problems (if any): Not applicable.

UTAH

Regulatory Program Element: Blaster Certification

Subelements Reviewed: (1) Training; (2) Certification; and
(3) Suspension and Revocation

=====
Summary Findings: As provided by Utah's approved State program, DOGM has delegated the Blaster Training, Examination, and Certification Program to the Utah Industrial Commission (UIC). A Memorandum of Understanding between DOGM and UIC outlines responsibilities and procedures for coordination.

UIC, in coordination with the College of Eastern Utah's Mining Department, offers routine training courses for persons seeking certification or re-certification.

UIC administers examinations to test the knowledge and abilities of applicants, reviews and verifies all applications to ensure that all experience and other requirements have been met, and issues and renews blaster certifications.

Suspension or revocation of a blaster's certification has never been necessary.

Utah's administration of its Blaster Certification Program is in conformance with the approved State program. The only deficiency in the program is that UIC employees who implement this part of Utah's approved program did not file statements of employment and financial interests as required by the conflict-of-interest provisions in the State program.

=====
Status of Problems (if any): OSM discussed with DOGM the filing of statements of employment and financial interests by employees of UIC who perform a function or duty under Utah's approved Regulatory Program. Two UIC employees filed statements during the first quarter of the 1991 evaluation period. DOGM reviewed the statements and indicated in its summary report to OSM-Washington that there were no conflicts of interest. Therefore, this problem is resolved.

UTAH

Regulatory Program Element: Small Operator Assistance

Subelements Reviewed: None.

=====

Summary Findings: This element was not selected for review during this evaluation period because of low activity in this program area. A complete review of this element is scheduled for the 1991 evaluation period.

=====

Status of Problems (if any): Not applicable.

UTAH

Regulatory Program Element: Program Amendments

Subelements Reviewed: (1) Notification of Program Changes;
(2) Responses to Part 732 Notifications; and (3) Promulgation and
Implementation of Approved Amendments

=====

Summary Findings: During the evaluation period, OSM discovered that Utah had made several changes to its coal statute and had not notified OSM of these changes or addressed them through the program amendment process. OSM requested that DOGM identify all such changes and submit them to OSM as program amendments, which DOGM subsequently did. One subsection of the State statute included in the amendment package grants the right to any person to contest a DOGM enforcement or permitting action on the basis that the State rule cited by DOGM was more stringent than corresponding Federal regulations, unless the State rule had been adopted in compliance with the State statute. OSM determined that this subsection of the statute, referred to as the "kill provision," was inconsistent with SMCRA because it would effectively allow Utah to unilaterally repeal, on a case-by-case basis, parts of the approved State program without first receiving OSM approval through the amendment process. DOGM subsequently withdrew this provision from the amendment package and has advised OSM that it will seek repeal during the next legislative session.

Also in regard to notification of program changes, the 1989 Annual Evaluation Report stated that OSM was concerned that DOGM may have delegated, by means of a MOU, certain program responsibilities and authority to the Department of Health relating to enforcement of effluent limitations. This MOU remains in effect at this time, although it is now considered an issue of how the MOU is interpreted and implemented rather than a problem with unapproved delegation of authority. DOGM is amending the MOU to remove the concern. This topic is discussed further under the element, "Enforcement" on pages 13 and 14 of this report.

To date, seven letters have been sent to Utah pursuant to 30 CFR 732.17(d). These letters were dated May 12, 1986; June 9, 1987; November 21, 1988; May 11, 1989; November 27, 1989; February 27, 1990; and June 22, 1990. On April 12, 1990, OSM published a notice in the Federal Register approving an entirely new set of Utah coal rules to replace the existing rules. That amendment incorporated most of the concerns contained in the first five 30 CFR Part 732 letters. Remaining concerns in those five letters are to be addressed in a formal amendment dated July 3, 1990, that is now being evaluated by OSM in accordance with the amendment process. In regard to the sixth 30 CFR Part 732 letter, which deals exclusively with incidental mining, Utah submitted a schedule for future submission of an informal amendment to address the

concerns by December 1, 1990, and a formal amendment by January 31, 1991. The final 30 CFR Part 732 letter deals with material damage caused by subsidence. No response to this letter was required; however, OSM asked Utah to delete a phrase in its rules for the sake of clarity.

Only two amendment topics considered during this evaluation period required considerable discussion between OSM and the State. One is the exemption of all public roads from permitting requirements; the other is the aforementioned "kill provision." DOGM has worked diligently during this evaluation period to resolve regulatory reform issues.

Utah generally promulgates its rules and statutes prior to formal submission to OSM for processing under the amendment process. OSM accepts this approach; however, OSM notified Utah that no new or revised rules or statutes should become effective until they have been approved by OSM. This notification was necessary because, contrary to 30 CFR 732.17(g), Utah had enacted changes to its statute that went into effect prior to being submitted to OSM as an amendment. Since this notification, Utah has taken care to state in formal amendments that the effective date is when the amendment is officially approved by OSM.

As of March 1983, Utah had adequately addressed all conditions of program approval. No new conditions have since been imposed upon Utah.

=====

Status of Problems (if any): Concerning resolution of the "kill provision," DOGM withdrew the provision from its program amendment package. OSM has informed DOGM that action must be taken during the next legislative session to repeal the "kill provision," or OSM will be required to initiate Federal pre-emptive proceedings.

UTAH

Regulatory Program Element: Program Administration

Subelements Reviewed: (1) Grants Management (2) Data Management;
(3) Coordination With Other Agencies; and (4) Identification and
Resolution of Conflicts of Interest

=====

Summary Findings: All grant-related documents submitted for the Utah regulatory program were reviewed for conditions varying from established requirements for grant financial management. A concern was identified where two final financial reports showed that the State had expended a higher percentage of Federal and a lower percentage of State funds than was specified in the approved grants. While DOGM maintains that these increases are due to actual expenditures for it to administer the State program on Federal lands, the review has identified problems with the methodology used to calculate the amount of money the State is required to spend to match the Federal grant. Utah's Federal Lands Cooperative Agreement specifies a method for calculating State and Federal shares. OSM believes that the method presently used by DOGM conflicts with the Cooperative Agreement.

The State's drawdown system was found to operate on a quarterly reimbursement basis, which substantially exceeds requirements. The single-audit report revealed no significant concerns with the State's accounting practices or internal control systems. Grant applications and reports were generally received on a timely basis and were found to be appropriate and acceptable. Contacts with State personnel revealed no significant concerns in grants management.

DOGM provides appropriate regulatory information to OSM.

DOGM's data management is generally adequate. Some refinement of DOGM's permit document libraries in Salt Lake City and the Price Field Office would enhance DOGM's inspection and enforcement program. Some confusion resulted during the evaluation period in resolving Ten-Day Notices because of problems in determining which permit documents in the Salt Lake City library were approved and which were currently under review and not yet approved. Also, DOGM's inspection staff would be better equipped to conduct thorough inspections if the permit documents in the Price Field Office were more current and complete.

Adequate coordination exists between DOGM and the Utah Industrial Commission (UIC) to minimize duplication and avoid omissions. UIC is the only other State agency that has a direct role in implementing the State program.

DOGM's approved program adequately addresses prohibited financial interests and reporting requirements, and administrative systems are in place for implementing these requirements. DOGM's Director was timely in filing a statement with OSM and in submitting the annual listing of exempt and non-exempt positions. The listing filed during this evaluation period indicated that no conflicts of interest were reported or found. One problem where employees of the UIC did not file statements of employment and financial interest was discussed earlier in this report.

=====

Status of Problems (if any): OSM is working with DOGM to resolve the question of the State's matching of Federal grant expenditures to ensure that Federal/State shares are appropriate.

OSM continues to encourage DOGM to improve permit document data management.

As stated earlier in this report under Blaster Certification, the UIC employees filed statements during the first quarter of the 1991 evaluation period. DOGM reviewed the statements and indicated in its summary report to OSM-Washington that there were no conflicts of interest. This concern is resolved.

UTAH

AMLR Program Element: Project Planning

Subelements Reviewed: (1) Inventory Maintenance; (2) Consideration of Public Comments; (3) Interagency Coordination; (4) Consideration of Experience With Design Alternatives; (5) Rights-of-Entry; and (6) Lien Eligibility Determinations

=====

Summary Findings: The Abandoned Mine Reclamation (AMR) Program maintains a current prioritized inventory of unreclaimed coal and noncoal hazards.

DOGM conducted public meetings, contacted landowners and key officials, published notices in newspapers, distributed letters and posters, and notified local governments in its efforts to provide opportunities for public comment on selected projects. This information is documented in DOGM's files and grant applications.

The State's files include documentation of interagency coordination on matters involving consultation for potential impacts on threatened and endangered species and cultural resources. They also included documentation of coordination with land management agencies. Consultation was completed for every funded project before OSM gave construction approval. Two situations arose in which DOGM's planning did not provide for obtaining OSM approvals of project scope changes before costs were incurred. One situation involved a potentially explosive methane leak in which DOGM performed work based on a conversation with OSM which DOGM assumed was adequate in lieu of written approval. The second situation involved DOGM removing unexpectedly greater amounts of coal waste than it estimated with funds intended for final project reclamation before OSM approved their use and awarded extra funding. OSM addressed each occurrence and discussed it with DOGM's staff.

At this point in the State's reclamation program, designs are standardized for similar hazard abatement methods based on techniques that have proven successful over the years. DOGM has used alternate designs when warranted for unique circumstances. In recent years, DOGM has used the most cost-effective approaches to reclamation in order to maximize the benefits of its limited funding and reach its goal of completing all coal reclamation.

Generally, DOGM acquired all rights-of-entry in a timely fashion for project construction. One situation developed in which Utah had to pay damages to a landowner because right-of-entry was not acquired prior to reclamation. DOGM's files showed that it made a reasonable effort to identify all property owners and parcels but did not identify one because the County Recorder failed to record the deed when it was

entered in 1927. DOGM resolved this unique situation to OSM's satisfaction. The State did not use nonconsensual entry for any projects during the period covered by this report.

OSM's review of DOGM's files showed that a finding of lien applicability was made for individual parcels in each completed project. Those findings led DOGM to file lien waivers for projects after completion based on public ownership, date of title acquisition, or no increase in fair market value in accordance with its approved Plan.

=====

Status of Problems (if any): OSM worked with DOGM to identify issues of not obtaining OSM approvals for scope changes prior to incurring costs. OSM also stressed the need to obtain all rights-of-entry prior to construction. DOGM developed a "Notice to Proceed Checklist" which documents the status of all permits and approvals for each project when construction is about to begin, including rights-of-entry and OSM approvals.

UTAH

AMLR Program Element: Project Construction

Subelements Reviewed: (1) Construction Management; (2) Postconstruction Monitoring/Evaluation/Maintenance; (3) Lien Recording and Maintenance; and (4) Emergency Investigations and Abatement Efforts

=====
Summary Findings: OSM's field visits and review of DOGM's files showed that the State monitors contract performance closely during reclamation to ensure that contract terms are met and that reclamation achieved program and project goals.

DOGM monitored completed projects to evaluate the success of its reclamation over the short and long terms. It developed its reclamation techniques to accommodate site-specific environmental conditions where standardized methods were not entirely satisfactory.

Lien waivers were filed for all projects for which DOGM made a finding of lien applicability. Waivers were filed based on public ownership, date of title acquisitions, or no increase in fair market value.

Utah had one reported emergency that involved a child lost in an underground noncoal mine. Several groups were involved in the search and rescue, and the child was found uninjured. DOGM participated in a public information campaign as a result of the incident. No emergencies were reported to the State that resulted in reclamation conducted by OSM's Federal Reclamation Program.

The program subelement, Emergency Investigations and Abatement Efforts, is not required to be reviewed because Utah does not have an emergency program.

=====
Status of Problems (if any): No problems were noted with this element.

UTAH

AMLR Program Element: Program Administration

Subelements Reviewed: (1) Grants Management; (2) Data Management; (3) Management and Disposal of Abandoned Mine Lands; and (4) Subsidence Insurance Programs

=====

Summary Findings: A review of all grant-related documents revealed no conditions which appeared to vary from established requirements for financial management. The State's drawdown system was found to operate on a quarterly reimbursement basis, which exceeds requirements. The single-audit report revealed no significant concerns with the State's accounting practices or internal control systems. Grant applications and reports are generally received on a timely basis and are found to be appropriate and acceptable. However, the State has occasionally failed to get written OSM approvals for project scope changes and cost increases prior to incurring the costs. Property management documents were acceptable. Contacts with State personnel revealed no significant concerns in grants management.

DOGM has a general system for tracking its reclamation accomplishments for public relations information and provides appropriate information to OSM for the annual evaluation report. Financial information received from DOGM was generally timely and appeared to be accurate. Program needs for data appear to be satisfied by the State's administrative and financial systems.

The AMR program did not acquire property to facilitate reclamation during this evaluation period.

Program subelement, Subsidence Insurance Program, is not required to be reviewed. The AMR program does not have a subsidence insurance program.

=====

Status of Problems (if any): OSM is working with DOGM to improve its grant applications and reporting. This will enable DOGM to comply closely with the requirements of the Federal Assistance Manual and the Grants Common Rule. This will enable OSM to fulfill its responsibilities under the provisions of those documents and to reconcile Utah's Problem Area Data Sheets in the National Abandoned Mine Land Inventory better.

APPENDIX A: Tabular Summaries of Mining, Reclamation and Other
Program-Related Data

Tables 1 through 15 present data pertinent to mining operations and the reclamation of abandoned mines within Utah. They also summarize certain actions relative to inspection, enforcement, permitting, bonding, staffing, and funding. Tables 16 through 19 present selected data concerning OSM inspections and the observations made on those inspections. Unless otherwise specified, the reporting period for the data contained in all tables is the 1990 evaluation year (July 1, 1989 to June 30, 1990). Additional data used by OSM in its evaluation of Utah performance is available for review in the evaluation files maintained by the Albuquerque Field Office.

TABLE 1

COAL PRODUCTION* (Millions of Tons)			
Calendar year	Surface mines	Underground mines	Total
1989	0	20.81	20.81
1988	0	18.05	18.05
1987	0	16.51	16.51

*OSM Fee Compliance Data

TABLE 2

INSPECTABLE UNITS
(As of June 30, 1990)

	Number and status*								Acres**			
	Active	Inactive		Abandoned	Totals							
		Temp. cess.	In reclam.									
STATE/PRIVATE LANDS	** IP*	** PP**	PP	IP	PP	IP	PP	IP	PP	IP	PP	Total
Surface mines	0	0	0	0	0	0	0	0	0	0	0	0
Underground mines	0	18	3	0	0	0	0	0	21	0	44,516	44,516
Other facilities	0	2	0	0	0	0	0	0	2	0	321	321
Subtotals	0	20	3	0	0	0	0	0	23	0	44,837	44,837
FEDERAL LANDS												
Surface mines	0	0	0	0	0	0	0	0	0	0	0	0
Underground mines	0	15	3	0	0	0	0	0	18	0	74,912	74,912
Other facilities	0	2	0	0	0	0	0	0	2	0	127	127
Subtotals	0	17	3	0	0	0	0	0	20	0	75,039	75,039
INDIAN LANDS												
Surface mines	0	0	0	0	0	0	0	0	0	0	0	0
Underground mines	0	0	0	0	0	0	0	0	0	0	0	0
Other facilities	0	0	0	0	0	0	0	0	0	0	0	0
Subtotals	0	0	0	0	0	0	0	0	0	0	0	0
ALL LANDS*****												
Surface mines	0	0	0	0	0	0	0	0	0	0	0	0
Underground mines	0	22	4	0	0	0	0	0	26	0	119,428	119,428
Other facilities	0	4	0	0	0	0	0	0	4	0	448	448
Totals	0	26	4	0	0	0	0	0	30	0	119,876	119,876

(continued on next page)

Continuation of TABLE 2

Number of exploration permits on State/private lands:.....	<u>0</u>
Number of exploration notices on State/private lands:.....	<u>0</u>
Number of exploration permits on Federal lands*****:.....	<u>0</u>
Number of exploration notices on Federal lands*****:.....	<u>8</u>
Average number of permits per inspectable unit:.....	<u>1</u>

*Definitions of status categories:

ACTIVE: Any site or facility that is not inactive or abandoned.

INACTIVE:

Temp. Cess.: Any site or facility for which the regulatory authority has approved the temporary cessation of operations in accordance with 30 CFR 816.131/817.131 or its State program equivalent.

In. Reclam.: Phase II reclamation completed or, for initial program sites, revegetation established.

ABANDONED: Site which has been deserted by the operator and which meets the criteria of 30 CFR 840.11(g).

**For each category of land, include only that portion of each inspectable unit actually located on the type of land in question (State/private, Federal or Indian).

***IP: Initial regulatory program sites.

****PP: Permanent regulatory program sites.

*****Entries may not equal the sum of the subtotals for all preceding categories because of overlapping data. For example, in a State with a cooperative agreement to regulate mining on Federal lands, an inspectable unit containing both State and Federal lands would appear in both the State/private and Federal lands categories but would be counted only once for this category because it is a single inspectable unit with a single regulatory authority.

*****Includes only exploration activities regulated by the State pursuant to a cooperative agreement with OSM or by OSM pursuant to a Federal lands program.

TABLE 3

STATE INSPECTION ACTIVITY									
Inspectable units*				Number of State inspections		Units for which State met required inspection frequencies			
Type	Number and status**			Inspection type		Complete Inspections		All Inspections	
	Active	Inactive	Abandoned	Partial	Complete	No.	%	No.	%
Surface mines	0	0	0	0	0	N/A	----	-----	----
Underground mines	22	4	0	213	117	25	96	25	96
Preparation plants	4	0	0	32	19	4	100	4	100
Other Facilities	0	0	0	0	0	N/A	----	-----	----
Totals	26	4	0	245	136	29	97	29	97
Exploration permits***	0			0	0	N/A	----	-----	----
Exploration notices***	8			0	8	N/A	----	-----	----

*Includes only inspectable units for which the State has inspection responsibility.

**See Table 2 for definitions of status categories.

***Status categories are not applicable to exploration operations, hence only the number of all valid or unreclaimed notices or permits is listed. Also, there is no required numerical inspection frequency.

TABLE 4

STATE PERMITTING ACTIONS

Type of application	Approved permit documents issued							
	Surface mines		Underground mines		Other facilities		Totals	
	No.	Acres	No.	Acres	No.	Acres	No.	Acres
New permits	0	0	1	9,905	0	0	1	9,905
Renewals	0	0	6	16,108	2	321	8	16,429
Revisions (exclusive of incidental boundary revisions)	0	N/A	40	N/A	7	N/A	47	N/A
Incidental boundary revisions	0	0	1	16.7	2	0.83	3	17.53
Transfers, sales, assignments	0	N/A	2	N/A	1	N/A	3	N/A
Exploration permits	0	N/A	0	N/A	0	N/A	0	N/A
Exploration notices*	0	N/A	1	N/A	0	N/A	1	N/A
Totals	0	0	51	26,029.7	12	321.83	63	26,351.53
*State approval not required for removal of less than 250 tons of coal.								

TABLE 5

BONDS RELEASED BY STATE (Permanent Program Permits)		
Reclamation phase	Number of release applications approved	Acres released
I	0	0
II	0	0
III	0	0

TABLE 6

STATE BOND FORFEITURE ACTIVITY (Permanent Program Permits)			
	Sites	\$	Acres
Bonds forfeited as of July 1, 1989*	3	\$251,734	33.2
Forfeited bonds collected as of July 1, 1989*	0	0	0
Bonds forfeited during EY 1990	0	0	0
Forfeited bonds collected during EY 1990	1	\$ 30,534	7.2
Forfeiture sites reclaimed during EY 1990	0	0 **	0
Forfeiture sites repermited during EY 1990	0	0	0
Forfeiture sites unreclaimed as of June 30, 1990	3	N/A	30
Excess reclamation costs recovered from permittee	0	0	0
Excess forfeiture proceeds returned to permittee	0	0	0
<p>*Includes data only for those forfeiture sites not fully reclaimed as of this date.</p> <p>**Cost of reclamation, excluding general administrative expenses.</p>			

TABLE 7

STATUS OF STATE'S ALTERNATIVE BOND POOL/FORFEITURE RECLAMATION FUND**		
	July 1, 1989	June 30, 1990
Number of participating permits	N/A	N/A
Acreage of participating permits	N/A	N/A
Fund balance	\$ N/A	\$ N/A
Portion restricted to specific sites	(\$ N/A)	(\$ N/A)
Fund income	N/A	\$ N/A
Expenditures	N/A	\$ N/A
Reclamation liabilities*	\$ N/A	\$ N/A
Portion covered by site-restricted bonds	(\$ N/A)	(\$ N/A)
Reclamation liabilities (number of sites)	N/A	N/A
Reclamation liabilities (acres)	N/A	N/A
*Estimated cost of reclaiming all sites for which the State has issued final bond forfeiture orders.		

**Utah does not have an alternative bond pool/forfeiture reclamation fund.

TABLE 8

CITIZEN COMPLAINTS		
Number of complaints	State	OSM
Pending action as of July 1, 1989	0	0
Received in EY 1990	1	0
Referred to State	N/A	0
Investigated	1	0
Responses provided to complainant	1	0
Pending action as of June 30, 1990	0	0

TABLE 9

ENFORCEMENT ACTIVITY				
Type of enforcement action	State		OSM	
	Number of actions	Number of violations	Number of actions	Number of violations
Notice of violation	43	52	1	2
Failure-to-abate cessation order	0	0	0	0
Imminent harm cessation order	1	1	0	0
Show cause order for pattern of violations	0	N/A	0	N/A
Permit suspension	0	N/A	0	N/A
Permit revocation	0	N/A	0	N/A

TABLE 10

STATE ALTERNATIVE ENFORCEMENT ACTIONS
FOR FAILURE-TO-ABATE CESSATION ORDERS (FTA-COs)

Type of alternative enforcement action	Number of alternative enforcement actions				Status of abatement action required by underlying FTA-CO*			
	In effect July 1, 1989	Taken in EY 1990**	Terminated, vacated, or rescinded in EY 1990	In effect June 30, 1990	Not started	Started but abandoned	Actively underway	Completed
Injunction	0	0	0	0	0	0	0	0
Permit suspension	0	0	0	0	0	0	0	0
Permit revocation	0	0	0	0	2	1	0	0
Individual civil penalty	0	0	0	0	0	0	0	0
Criminal penalty	0	0	0	0	0	0	0	0
Total	0	0	0	0	2	1	0	0

FTA-COs requiring alternative enforcement*** as of July 1, 1989, but for which action is not yet in effect:.....	1
Additional FTA-COs requiring alternative enforcement during EY 1990:.....	0
FTA-COs for which required alternative enforcement action was taken during EY 1990**:	0
Formerly eligible FTA-COs terminated or vacated during EY 1990:	1
FTA-COs requiring alternative enforcement as of June 30, 1990, but for which action is not yet in effect:.....	0

*Includes data for FTA-COs underlying all alternative enforcement actions in effect at any time during EY 1990, not just those in effect at the end of the year. Where a single alternative enforcement action has more than one underlying FTA-CO, all such FTA-COs are considered to be one combined FTA-CO for purposes of this column.

**This category does not include actions which the regulatory authority has initiated or requested but which are not yet in effect.

***FTA-COs requiring alternative enforcement are those that remain unabated more than 30 days from the date of issuance, except in States without a 30-day cap on assessment of the mandatory daily civil penalty. In these States, this standard is discretionary rather than mandatory. The former situation applies in Utah.

TABLE 11

OPERATION OF APPLICANT-VIOLATOR SYSTEM (AVS) IN UTAH						
AVS problem category	Number of applications with:					
	Problems identified by AVS during EY 1990*		AVS-identified problems resolved (for problems identified prior to EY 1990)*		AVS-identified problems resolved (for problems identified during EY 1990)*	
	New permits	TSAs**	New permits	TSAs**	New permits	TSAs**
Unabated violation	0	4	0	0	0	4
Unpaid civil penalty	0	1	0	0	0	1
Unpaid AML fee or unfiled AML fee report	0	0	0	0	0	0
Bond forfeiture	0	0	0	0	0	0
					New Permits	TSAs**
					-----	-----
Number of applications received by the State in EY 1990:...					1	16
Number with AVS-identified problems***:.....					0	5
Number of applications for which AVS-identified problems have been resolved (for problems identified prior to EY 1990)***:.....					0	0
Number of applications for which AVS-identified problems have been resolved (for problems identified during EY 1990):.....					0	4
Number of permits issued in EY 1990 with conditions requiring correction of AVS-identified problems:.....						1
Number of permits (regardless of date of issuance) with conditions requiring correction of AVS-identified problems for which such conditions remain unsatisfied:						
As of July 1, 1989.....						0
As of June 30, 1990.....						1
*Information on this table is for the period July 1, 1989 to April 30, 1990.						
**TSAs: Transfers, sales, or assignments of permit rights.						
***Does not equal sum of applicable columns above because an application may have more than one type of AVS-identified problem.						

TABLE 12

STATE STAFFING (Fulltime Equivalents as of June 30, 1990)		
	Positions filled	Positions vacant
Abandoned mine land reclamation program	7 1 (volunteer)	2
Regulatory program	18.5	7.0
Permitting	9.25	4.75
Inspection	3.75	1.25
Other	5.5	1.0
Total	26.5	9.0
Interagency personnel assignments:..... 0		

TABLE 13

FUNDS GRANTED TO UTAH BY OSM (Thousands of Dollars)			
Grant category	Federal funds requested by State	Federal funds awarded	Total program funding
Administration and enforcement	\$1,284	\$1,184	\$1,409 (84)*
Abandoned mine land reclamation**	\$1,908	\$1,908	\$1,908 (100)
Small operator assistance	-0-	-0-	-0- (0)
Other [itemize]	-0-	-0-	-0- (0)
Total	\$3,192	\$3,092	\$3,317 (93)
*Percent Federally funded.			
**Includes post-1992 State set-aside funds.			

TABLE 14

STATUS OF AMLR FUNDS AWARDED TO UTAH* (Millions of Dollars)								
Fiscal year	Funds approved (\$)	Obligations		% of grant period lapsed	Outlays by activity			
		\$	%		Planning & design	Construction	Project inspection	Administration
Administrative grants								
EY 81-88	3.08	2.72	88	100	N/A	N/A	N/A	2.72
EY 89	.55	.55	100	100	.42**	N/A	N/A	.13
EY 90	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Subtotal	3.63	3.27	90	100	.42	N/A	N/A	2.85
Construction grants (does not include State emergency and noncoal project funding)								
EY 81-88	5.74	5.74	100	98	N/A	5.74	N/A	N/A
EY 89	1.29	1.29	100	79	N/A	1.29	N/A	N/A
EY 90	1.74	1.73	99	84	N/A	1.73	N/A	N/A
Subtotal	8.77	8.76	99	87	N/A	8.76	N/A	N/A
State emergency project funding								
EY 81-88	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
EY 89	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
EY 90	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Subtotal	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Noncoal project funding								
EY 81-88	.77	.77	100	100	N/A	.77	N/A	N/A
EY 89	.38	.25	66	70	N/A	.25	N/A	N/A
EY 90	0	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Subtotal	1.15	1.02	88	85	N/A	1.02	N/A	N/A
Cooperative agreements								
All EY	.58	.53	92	100	N/A	N/A	N/A	N/A
TOTAL	14.13	13.58	96	93	.42	9.78	N/A	2.85
* Does not include subsidence insurance grants or post-1992 set-aside funds. ** Information is estimated from personnel time sheets. On the time sheets, this information is combined. The hours are broken out by project instead.								

TABLE 15

AMLR RECLAMATION ACHIEVEMENTS			
Project Benefit		During evaluation period	Since program approval
Mine portals closed	(number)	73	560
Vertical shafts sealed	(number)	15	154
Mine fires controlled	(number)	3	12
Mine gas problems resolved	(number)	0	6
Landslides stabilized	(number)	0	0
Dwellings/structures/land protected/preserved	(number/ acres)	1	43 structures
Hazardous impoundments removed	(number)	0	0
Highwalls eliminated	(number)	1	11
Clogged stream channels restored	(miles)	0	0
Stream water quality improved by source elimination or reduction	(miles)	.3	2.6
Stream water quality improved by chemical treatment	(miles)	0	0
Disturbed lands regraded and/or revegetated	(acres)	30	340
Public facilities constructed or enhanced		0	1
Public land developed		0	0
Other [specify] *			
1. Hazardous structures removed		1	236
2. Subsidence pits filled		0	107
3. Acres of mine refuse reclaimed		26.4	171.7
		(483,245 cy)	
Total acreage reclaimed by all projects		30	340

TABLE 16

OSM INSPECTIONS						
Annual random sample size (from Directive INE-20): <u>15</u>						
Type of unit inspected	Type of inspection					Totals
	Random sample	Other oversight (special study)	Ten-day notice followup*	Enforcement action followup	Other	
Surface mines	0	0	0	0	0	0
Underground mines	14	0	3	1	1	19
Preparation plants	0	0	0	0	0	0
Other facilities	1	0	0	0	0	1
Exploration permits	0	0	0	0	0	0
Exploration notices	0	0	0	0	0	0
Totals	15	0	3	1	1	20
Active	13	0	2	0	1	16
Inactive	2	0	1	1	0	4
Abandoned	0	0	0	0	0	0
Initial program	1	0	1	1	0	3
Permanent program	14	0	2	0	1	17
*When State response is inappropriate, and Federal inspection is necessary.						

TABLE 17

INDUSTRY COMPLIANCE (OSM Random Sample Inspections Only)	
Number of sites inspected:..... <u>15</u>	
Number of violations per inspectable unit	Number of inspectable units with indicated number of violations observed by OSM
None	2
1	1
2	3
3	6
4	1
5	1
6	0
7	0
8	0
9	0
10	1
More than 10	0

TABLE 18

DISTRIBUTION OF VIOLATIONS BY PERFORMANCE STANDARD (For Violations Observed by OSM during Random Sample Inspections)		
Performance standard category	Violations requiring State enforcement action at time of last State complete inspection	
	Number cited by State	Number uncited by State
Mining Within Permit Boundaries	0	4
Signs and Markers	0	2
Sediment Control Measures	0	14
Design and Certification Requirements - Sediment Control	0	3
Blasting Procedures	0	2
Haul/Access Road Design and Maintenance	0	2
Topsoil Handling	0	1
Disposal of Excess Spoil	0	3
Other category including:		
1. Unapproved Facilities Construction	0	1
2. Inadequate Bond	0	1
3. No Valid Permit	0	1
Total	0	34

TABLE 19

SERIOUSNESS OF VIOLATIONS (For Violations Observed by OSM during Random Sample Inspections)								
NUMBER OF VIOLATIONS WITH IMPACTS REMAINING WITHIN PERMIT AREA								
Probability of occurrence	Degree of impact						Totals	
	Minor		Moderate		Considerable			
	Observed*	Uncited**	Observed	Uncited	Observed	Uncited	Observed	Uncited
None or unlikely	11	9	3	2	0	0	14	11
Likely	1	1	12	11	4	3	17	15
Occurred	2	1	4	1	0	0	6	2
Subtotals	14	11	19	14	4	3	37	28
NUMBER OF VIOLATIONS WITH IMPACTS EXTENDING OUTSIDE PERMIT AREA								
Probability of occurrence	Degree of impact						Totals	
	Minor		Moderate		Considerable			
	Observed	Uncited	Observed	Uncited	Observed	Uncited	Observed	Uncited
None or unlikely	0	0	1	1	0	0	1	1
Likely	1	1	0	0	0	0	1	1
Occurred	0	0	1	0	1	1	2	1
Subtotals	1	1	2	1	1	1	4	3
NUMBER OF ADMINISTRATIVE (RECORDKEEPING) VIOLATIONS								
	Degree of obstruction to enforcement						Totals	
	Minor		Moderate		Considerable			
	Observed	Uncited	Observed	Uncited	Observed	Uncited	Observed	Uncited
	2	2	1	1	0	0	3	3
Totals (whole table)	17	14	22	16	5	4	44	34
*Includes all such violations observed by OSM.								
**Includes ONLY those violations that OSM believes existed at the time of the last State complete inspection but were not then cited by the State.								

APPENDIX B: OSM Schedule for Evaluating State Program Elements
and Subelements (Evaluation Years 1990-1992)

Utah

CYCLICAL REVIEW SCHEDULE (REGULATORY PROGRAM)

Element/subelement	Evaluation year			Basis for frequency *
	1990	1991	1992	
A. Permitting Actions				
1. Processing of new mining permit applications				
a. Administrative completeness	X		X	2
b. Public notice/availability/ consideration of comments	X		X	2
c. Solicitation/consideration of comments from governmental agencies and SHPO	X		X	2
d. Baseline data	X		X	2
e. Mining and reclamation plan	X	X	X	5
f. Subsidence control plan	X		X	2
g. PHC/CHIA	X		X	2
h. Liability insurance	X		X	2
i. Written findings/documentation/ terms and conditions	X		X	2
j. AVS checks and permit blocking	X	X	X	1
2. Processing of exploration applications				
a. Completeness	X	X		2
b. Public notice/consideration of comments	X	X		2

Element/subelement	Evaluation year			Basis for frequency *
	1990	1991	1992	
c. Justification for tonnage removal, use or sale, or exploration on lands unsuitable for mining	X	X		2
d. Written findings/documentation	X	X		2
3. Processing of notices of intent to explore			X	2
4. Processing of applications for permit revisions, transfers, sales, and assignments				
a. Determination of significance (revisions only)	X		X	2
b. Public notice (if applicable)/ consideration of comments	X		X	2
c. PHC/CHIA reevaluation (revisions only)	X		X	2
d. Written findings/documentation	X		X	2
5. Processing of permit renewal applications				
a. Completeness		X		2
b. Public notice/consideration of comments		X		2
6. Conduct of midterm and other reviews required by 30 CFR 774.11	X		X	2
7. Maintenance of appropriate liability insurance		X		2

Element/subelement	Evaluation year			Basis for frequency *
	1990	1991	1992	
B. Performance Bonds				
1. Tracking and security systems	X			2
2. Computation and adequacy	X			2
3. Verification of bond validity/ value/lack of restrictions	X			2
4. Alternative bonding system*	N/A			7
5. Adjustments and replacements		X		2
6. Processing of bond release applications				
a. Public notice/notification of interested parties/ consideration of comments		X		2
b. Documentation of adequacy of remaining bond		X		2
c. Evaluation of reclamation success	X	X	X	1
7. Forfeiture				
a. Procedures			X	2
b. Collection and litigation			X	2
c. Site reclamation			X	2

*An alternative bonding system is not a part of the State's approved program.

Element/subelement	Evaluation year			Basis for frequency *
	1990	1991	1992	
C. Inspections				
1. Frequency	X	X	X	1
2. Inspection reports				
a. Completeness			X	2
b. Documentation of site conditions/violation status/ context			X	2
c. Narrative continuity with prior reports			X	2
d. Documentation of mine status			X	2
3. Maintenance of inspectable units list and inspection database	X	X	X	1
4. Citizen complaints		X		2
D. Enforcement				
1. Identification and citation of violations	X	X	X	1
2. Notices of violations and cessation orders				
a. Timeliness of issuance and termination		X		2
b. Appropriateness of remedial measures and abatement periods		X		2
c. Documentation of reasons for modifications, terminations, and vacations	X	X		3

Element/subelement	Evaluation year			Basis for frequency *
	1990	1991	1992	
2. Pattern of violations reviews/ show cause orders/hearings			X	2
3. Timeliness and effectiveness of alternative enforcement actions			X	2
4. Responses to Ten-Day Notices	X	X	X	3
E. Civil Penalties				
1. Procedures	X			2
2. Documentation of assessments, waivers, and adjustments	X			2
3. Maintenance of enforcement value				
a. Blocking of new permits if penalties unpaid	X			2
b. Collection efforts	X			2
F. Administrative and Judicial Review				
1. Review procedures				
a. Notification of rights	X			2
b. Escrowing of penalties	X			2
c. Timeliness of hearings and decisions	X			2
d. Documentation of decision rationale	X	X	X	3
2. Appeal or remediation of adverse decisions	X			2
3. Cost recovery procedures and decisions	X			2

Element/subelement	Evaluation year			Basis for frequency *
	1990	1991	1992	
G. Designation of Lands Unsuitable for Mining				
1. Processing of petitions			X	2
2. Maintenance of database and inventory system			X	2
H. Blaster Certification				
1. Training	X			2
2. Certification	X			2
3. Suspension and revocation	X			2
I. Small Operator Assistance				
1. Application review/ verification of eligibility		X		2
2. Contract monitoring		X		2
3. Reimbursement monitoring/ procedures		X		2
4. Laboratory certification		X		2
J. Program Amendments				
1. Notification of program changes	X	X	X	1
2. Responses to Part 732 notifications	X	X	X	1
3. Promulgation and implementation of approved program amendments	X	X	X	1

Element/subelement	Evaluation year			Basis for frequency *
	1990	1991	1992	
K. Program administration				
1. Grants management				
a. Drawdowns and disbursements	X	X	X	2
b. Accounting procedures	X	X	X	2
c. Timeliness of applications and reports	X	X	X	2
d. Maintenance of internal controls	X	X	X	2
e. Audits/implementation of recommendations	X	X	X	2
f. Procurement and management of property and services	X	X	X	2
2. Data management	X	X	X	2
3. Coordination with other agencies	X	X	X	2
4. Identification and resolution of conflicts of interest	X	X	X	2

***Frequency codes:**

- 1 - Required annual review
- 2 - Routine cyclical review
- 3 - Continuing Action Plan item or other problem
- 4 - Action Plan follow-up (verification of tentative resolutions)
- 5 - Inspection findings/trend analysis
- 6 - Public concern
- 7 - Other

Utah

CYCLICAL REVIEW SCHEDULE (AMLR PROGRAM)

Element/subelement	Evaluation year			Basis for frequency *
	1990	1991	1992	
A. Project Planning				
1. Inventory maintenance	X	X	X	2
2. Consideration of public comments	X	X	X	2
3. Interagency coordination	X		X	2
4. Consideration of experience with design alternatives	X		X	2
5. Rights-of-entry	X		X	2
6. Lien eligibility determinations	X		X	2
B. Project Construction				
1. Construction management	X		X	2
2. Postconstruction monitoring/ evaluation/maintenance	X		X	2
3. Lien recording and maintenance	X		X	2
4. Emergency investigations and abatement efforts	N/A	N/A	N/A	7

7 - Element B-4: Utah AML does not have an approved emergency program.

Element/subelement	Evaluation year			Basis for frequency *
	1990	1991	1992	
C. Program Administration				
1. Grants management				
a. Drawdowns and disbursements	X	X	X	2
b. Accounting procedures	X	X	X	2
c. Timeliness of applications and reports	X	X	X	2
d. Maintenance of internal controls	X	X	X	2
e. Audits/implementation of recommendations	X	X	X	2
f. Procurement and management of property and services	X	X	X	2
2. Data management	X	X	X	2
3. Coordination with other agencies			X	2
4. Management and disposal of abandoned mine lands	X		X	2
5. Subsidence insurance program management	N/A	N/A	N/A	7

*Frequency codes:

- 1 - Required annual review
- 2 - Routine cyclical review
- 3 - Continuing Action Plan item or other problem
- 4 - Action Plan follow-up (verification of tentative resolutions)
- 5 - Inspection findings/trend analysis
- 6 - Public concern
- 7 - Other

7 - Element C-5: Utah AML does not have an approved subsidence insurance program.



State of Utah

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

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A. Bangerter
Feb - 1990

December 10, 1990

Mr. Robert H. Hagen
Albuquerque Field Office
Office of Surface Mining
Reclamation and Enforcement
Suite 310
625 Silver Ave SW
Albuquerque, New Mexico 87102

Dear Bob:

Re: Division Comments on Final 1990 Evaluation Report for Utah

Thank you for your consideration of the Division's comments concerning the oversight report. Please attach the following comments to any distribution of the final report or any portions thereof.

Public Roads - Comments concerning Sections III.A.1., paragraph 1; Regulatory Program Element - Permitting Actions, paragraph 10.

Following the federal remand, and resulting state remand, based on Judge Flannery's decision, OSM notified DOGM that OSM would repromulgate regulations. Much of the delay in resolving this issue results from OSM's failure to date to address this issue in federal rulemaking. Absent a federal regulation, DOGM's Board has adopted rules and DOGM has proposed a policy which is consistent with court actions and OSM legal evaluations. DOGM is awaiting OSM action concerning the program amendments and policy guidance.

Timeliness of Civil Penalty Assessment - Comments concerning Sections III.A.1., paragraph 4; Regulatory Program Element - Civil Penalties.

DOGM reviewed OSM's concerns regarding timeliness of civil penalty assessments. DOGM has discontinued the practice of delaying assessment and is assessing penalties within 30 days.

Permit Transfers and Bond - Comments concerning Sections III.B.1., paragraphs 3 and 4; Regulatory Program Element - Permitting Actions, paragraph 4.

DOGM conducted the referenced permit transfers as well as the bonding associated with those transfers in accordance with the Utah program. OSM continues to criticize DOGM without specifying programmatic or administrative problems.

MOU Regarding NPDES Violations - Comments concerning Section III.B.1., paragraph 7; Regulatory Program Element - Program Amendments, paragraph 2; Regulatory Program Element - Enforcement, paragraph 11.


The MOU between DOGM and Health has been revised. However, the overriding issue of duplication of authority and responsibility between OSM and EPA must be resolved at the federal level.

Program Funding - Comments concerning Regulatory Program Element - Program Administration, paragraphs 1 and 7.

Funding is consistent with the historical procedures for grant awards to DOGM, and with the historical interpretation of the Cooperative Agreement.

Please contact me if there are further questions.

Best regards,



Dianne R. Nielson
Director

lsj

WDN138